IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

INCOME TAX APPEAL NO.280 OF 2007

The Commissioner of Income-tax .. Appellant.
Versus
Terna Shetkari Sahakari Sakhar
Karkhana Limited .. Respondent.

Mr.B.M. Chatterjee with Mrs.P.P. Bhosale for the appellant.
Mr.S.N. Inamdar with Mr.A.K. Jasani for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 8TH OCTOBER, 2007.

P.C. :

1. Parties agree that the questions of law can be reframed. Admit on the following questions of law.

1. Whether the Appellate Tribunal was right in law in holding that provisions of Section 40A(2)(a) are not applicable to a co-operative Society ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the additional payment over and above the statutory minimum price (SMP) was cane price and not diversion of profit and as such allowable as business expenditure under section 37(1) of the Income Tax Act, 1961 ?

3. Whether on the facts and in the circumstances of the case cane price/Khodki charges paid by the assessee was not "Bonus" within the meaning of 2(4) of the Maharashtra Co-op. Societies Act, 1960 and it was allowable as business expenditure ?

4. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to Harvesting and Transporting

Contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which the assessee is giving huge interest to the financial institutions. Thus, it was nothing but a diversion of borrowed funds for non-business purpose ?

5. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing to allow the claim in respect of delayed payment of PF/EPF, if it has been paid upto the date of filing of Return of Income ignoring the fact that said amendment to the provisions of Section 43B of the I.T. Act was made w.e.f. 01/04/2004 i.e. from A.Y. 2004-05 and prior to that period, such contribution is to be allowed only when the same is paid before the due date of resepctive month.

2. Question Nos.1,2 and 3 have been answered in favour of the assessee and against the revenue by our judgment dated 14th August, 2007 in Income Tax Appeal No.318 of 2007 & other appeals {The Commissioner of Income-tax V/s. Manjara Shetkari Sahakari Sakhar Karkhana Limited}.

2. Question No.4 pertains to advances to Harvesting and Transporting Contractors. This issue has been answered in favour of the assessee and against the Revenue by our Judgment dated 17th September, 2007 in Income Tax Appeal No.273 of 2007 (The Commissioner of Income-tax V/s. Samarth Sahakari Sakhar Karkhana Limited).

3. Question No.5 pertains to employers contribution to PF has been answered against the assessee and in favour of the revenue by our judgment dated 8th October, 2007 in Income Tax Appeal No.256 of 2004 & other appeals {The Commissioner of Income Tax V/s. Godavari (Mannar) Sahakari Sakhar Karkhana Ltd.,}.

4. In the light of that question Nos.1 to 4 answered in the affirmative in favour of the assessee and against the revenue. Question No.5 is answered in the negative in favour of the revenue and against the assessee.

5. The Appeal is accordingly disposed of with no order as to costs.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)